

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In Re: : Chapter 13  
:   
**NOEL L. & KIMBERLY M. WILSON,** : Case No. **07-21417-JKF**  
:   
: Adv. No. **09-02025-JKF**  
*Debtors,* :  
===== :  
**NOEL L. & KIMBERLY M. WILSON,** :  
:   
: *Plaintiffs,* :  
:   
vs. :  
:   
**DAIMLERCHRYSLER FINANCIAL** :  
**SERVICES AMERICAS LLC,** :  
:   
*Defendant,* :  
:

**DEBTORS' BRIEF IN RESPONSE TO MOTION TO DISMISS**

AND NOW come the Plaintiffs, NOEL L. & KIMBERLY M. WILSON, by and through their Attorney, MICHAEL S. GEISLER, ESQUIRE, and file this Brief, of which the following is a statement:

**FACTS:**

The Debtors filed a Chapter 13 Petition on March 7, 2007. The Defendant is Daimlerchrysler Financial Services Americas LLC. The subject property is a 2002 Dodge Caravan. The Plaintiffs believe that the subject property had a fair market value of \$2,000.00 at the time of filing. The Defendant is the holder of an alleged secured claim in the amount of \$12,862.06. The Plaintiffs believe

that the claim of the Defendant is secured in the amount of \$2,000.00 and that the remainder of the Defendant's claim is unsecured.

The Defendant has filed a Motion to Dismiss asserting that there was a deadline for filing a Complaint to Determine Secured Status under Section 506 of the Bankruptcy Code created by the Court's Confirmation Order of October 15, 2007 and that the Court's confirmation of a Chapter 13 Plan without a provision for a Section 506 action was res judicata barring a Section 506 action in the future. The Defendant also asserts that any Trustee distributions cannot be reversed.

I. WHETHER A SECTION 506 ACTION IS BARRED BY THE COURT'S DEADLINE IN ITS CONFIRMATION ORDER?

There is no such deadline for filing a Section 506 action. A debtor's Section 506 action was not precluded on the grounds of untimeliness even though the motion was filed more than seven months after confirmation of Chapter plan. *In re Lewis*, 875 F.2d 53 (3d Cir. 1989) The Section 506 deadline in the Court's Order does not affect the substantive rights of the Plaintiffs. Bankruptcy cases have been reopened to allow the filing of lien avoidance actions. The purpose of the provision is to move the process along and give the Trustee comfort in making distributions that it will not be responsible for a wrong distribution. *In re Sheckard*, 386 B.R. 118 (Bankr. E.D.Pa. 2008)(25 months from discharge to motion to reopen). *In re Kelly*, 311 B.R. 341 (Bankr. W.D. NY 2004)(four years between discharge and motion to reopen not laches), *In re Male*, 362 B.R. 238 (Bankr. E.D. North Carolina 2007) (two years after case closed)

II. THE COURT'S CONFIRMATION OF A CHAPTER PLAN IS NOT RES JUDICATA AS TO A SUBSEQUENT 506 ACTION.

The Defendant claims that the Plaintiff is now barred from filing a Section 506 action because it was not raised pre-confirmation in the Chapter 13 Plan. A Chapter 13 Plan and confirmation order is ineffective in obtaining relief under Section 506 of the Bankruptcy Code. To obtain relief under Section 506 of the Bankruptcy Code, an Adversary Complaint must be filed. *SLW Capital LLC v. Mansaray-Ruffin* (*In re Mansaray-Ruffin*), 530 F.3d 230, 232 (3d Cir. 2008). A confirmation order is res judicata as to all issues decided or which could have been decided at the hearing on confirmation. *In re Szostek*, 886 F.2d 1405 (3<sup>rd</sup> Cir. 1989) If a provision would have been included in the Chapter 13 Plan indicating that a Section 506 action was contemplated, it would not have required an Objection by Defendant to preserve its rights. Adversary proceedings are not part of the confirmation process. *In re Strong*, 203 B.R. 105 (Bankr. N.D. Ill 1996). The contemplation of a Section 506 action is not a confirmation issue. The confirmation of a Plan with a provision indicating a Section 506 action would be filed would not have determined the value of the collateral.

III. WHETHER THE DISTRIBUTIONS OF A CHAPTER 13 TRUSTEE CAN BE RECOVERED DURING THE PENDENCY OF A CHAPTER 13 CASE?

If the Complaint is determined in favor of the Plaintiff, the Trustee distributions paid in reliance on the Chapter 13 plan have been recoverable in the past and could be recovered. *In re Kelderman*,

75 B.R. 69 (Bankr. S.D. Iowa 1987). *In re Madden*, 388 F. Supp. 47 (USDC Idaho 1975); *In re Wilson*, 274 B.R. 4 (Bankr. DC 2001).

IN CONCLUSION, for the reasons stated above, the Court should deny Defendant's Motion to Dismiss.

Respectfully submitted,

/s/ Michael S. Geisler

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**MICHAEL S. GEISLER, ESQUIRE**  
Pa. I.D. No. 39414  
Attorney for Plaintiffs

410 Jonnet Building  
Monroeville, PA 15146  
Tele: (412) 372-2820  
Fax: (412) 372-2513

**CERTIFICATE OF SERVICE**

I, MICHAEL S. GEISLER, ESQUIRE, Attorney for the Plaintiffs, hereby certify that I have served a true and correct copy of the within Brief upon the following by electronic means:

RONDA J. WINNECOUR, TRUSTEE  
3250 US Steel Tower  
Pittsburgh, PA 15219

BRIAN E. CAINE, ESQUIRE  
Deily, Mooney & Glastetter, LLP  
One Greentree Center  
10000 Lincoln Drive East, Suite 201  
Marlton, NJ 08053

/s/ Michael S. Geisler

DATED: 4/6/2009

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**MICHAEL S. GEISLER, ESQUIRE**  
Pa. I.D. No. 39414  
Attorney for Plaintiffs

410 Jonnet Building  
Monroeville, PA 15146  
Tele: (412) 372-2820  
Fax: (412) 372-2513